



LAWRENCE C. PAULSON  
Secretary

VIA AIR COURIER

April 23, 2013

Joshua Barber  
Remedial Project Manager  
Eastern PA Remedial Branch  
United States Environmental Protection  
Agency – Region III  
1650 Arch Street  
Philadelphia, PA 19103

Re: Lower Darby Creek Area Superfund Site  
Operable Unit 1 – Clearview Landfill  
Your Pre-Special Notice Letter Inquiry

Dear Mr. Barber:

We received Joan Armstrong's recent pre-Special Notice letter of inquiry concerning the Lower Darby Creek Area Superfund Site Operable Unit 1 – Clearview Landfill (the "Site"). Initially, I want to thank you for extending to us the courtesy of a pre-Special Notice letter. We specifically reply to Ms. Armstrong's request for a response from us within 14 days of our receipt of her correspondence.

Candidly, Ms. Armstrong's letter came as a surprise, not because of USEPA's contemplation of a special notice procedure for this Site, but because it reflects an underlying belief that ThyssenKrupp Budd's ("TK Budd") alleged contributions warrant special notice letter attention. We respectfully disagree.

TK Budd is familiar with the Superfund process at large co-disposal landfills, having been involved to some degree in a number of the sites in the Greater Philadelphia area. However, having participated in the assembly of the Company's Section 104(e) responses, I am more than a bit surprised that we are being targeted in this manner, given the very limited information suggesting that any hazardous substance containing waste was contained in any waste pickups that may have occurred at TK Budd's Philadelphia area plants.

TK Budd has a record of acting responsibly and participating to the extent circumstances warrant whenever it has been identified as a PRP at a Superfund Site. TK Budd has been a lead PRP at some sites and a *de minimis* party at others. This is not a case where TK Budd assessed its "level of participation" as being in the lead-PRP category and we would like to meet with you and your staff to discuss the evidence you believe implicates TK Budd in a more substantive way. If you are available to meet in the next few weeks, please let me know when.

Preliminarily, and without prejudice to its final legal position, TK Budd assumed its "role" at this Site would be more fairly characterized as that of a *de minimis* party, given the non-hazardous nature of the materials picked up by the transporter USEPA previously informed us was a customer of this Landfill. In compiling its

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pre-Special Notice target list, did the Agency perform any type of waste-in allocation from which it has ranked parties? If so, we would very much appreciate the opportunity to review that allocation and the data underlying its preparation. If not, what criterion was used? We would also like to understand where TK Budd ranks relative to the other parties who apparently received Ms. Armstrong's letter, as well as other parties known to have sent waste to the site but who did not warrant Ms. Armstrong's recent attention.

We also need to understand what USEPA is proposing for the Site by way of future response actions, so we can understand fully the potential cost implications of any level of participation. Has USEPA planned any type of meeting to review its study results or the future course of the Superfund process at this Site? Has there been any estimate of costs to complete any additional closure work that may need to be done?

As you can see, we have many questions. At this juncture, we are not prepared to state that we will not cooperate with USEPA or other PRPs as proposed in Ms. Armstrong's letter, we simply do not have enough information to make an informed decision. That said, TK Budd does not need a Special Notice letter to force it to "cooperate" with USEPA or other parties implicated at this Site and, indeed, we think it would be unfair under the facts here to target TK Budd for such an enforcement directive, or to lump TK Budd in with other parties for whom there is clear evidence of hazardous substance containing waste disposal at this Site.

In conclusion, we would like to learn more about the Site and the evidence which you believe implicates the Company in any release or threatened release there. If we are satisfied that hazardous substance containing wastes generated by the Company were disposed of at the Site, we are prepared to cooperate with the parties that assume lead responsibility for managing the Site to closure. However, based on the facts as we currently understand them, TK Budd does not see itself as a leader in that process.

I would be happy to discuss the above with you at your convenience. If you have information you can send to me on the waste-in data base or allocation, or on the costs USEPA estimates to manage the Site to closure, I would very much appreciate your sending it to me. Thank you again for your time.

Very truly yours,



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